
By: **Senator Haines**

Introduced and read first time: February 4, 2004

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property - Residential Property Disclaimer and Disclosure Statements**
3 **- Latent Defect**

4 FOR the purpose of requiring that a residential property disclaimer statement state
5 that a vendor represents and warrants that the vendor has no actual knowledge
6 of latent defects in the real property or improvements on the real property
7 except as disclosed on the residential property disclaimer statement and that a
8 purchaser will receive real property "as is", with all defects, including latent
9 defects, that may exist, except as otherwise provided in the contract of sale of
10 real property; requiring that a disclosure form include a list of all defects,
11 including latent defects, or information of which the vendor has actual
12 knowledge in relation to certain items; defining a certain term; and generally
13 relating to residential property disclaimer and disclosure statements.

14 BY repealing and reenacting, with amendments,
15 Article - Real Property
16 Section 10-702
17 Annotated Code of Maryland
18 (2003 Replacement Volume and 2003 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article - Real Property**

22 10-702.

23 (a) IN THIS SECTION, "LATENT DEFECT" MEANS A MATERIAL DEFECT IN REAL
24 PROPERTY OR AN IMPROVEMENT TO REAL PROPERTY THAT:

25 (1) A PURCHASER WOULD NOT REASONABLY BE EXPECTED TO
26 ASCERTAIN OR OBSERVE BY A CAREFUL VISUAL INSPECTION OF THE REAL
27 PROPERTY; AND

28 (2) WOULD POSE A DIRECT THREAT TO THE HEALTH OR SAFETY OF:

1 (I) THE PURCHASER; OR

2 (II) AN OCCUPANT OF THE REAL PROPERTY, INCLUDING A TENANT
3 OR INVITEE OF THE PURCHASER.

4 (B) (1) This section applies only to single family residential real property
5 improved by four or fewer single family units.

6 (2) This section does not apply to:

7 (i) The initial sale of single family residential real property:

8 1. That has never been occupied; or

9 2. For which a certificate of occupancy has been issued
10 within 1 year before the vendor and purchaser enter into a contract of sale;

11 (ii) A transfer that is exempt from the transfer tax under § 13-207
12 of the Tax - Property Article, except land installment contracts of sale under §
13 13-207(a)(11) of the Tax - Property Article and options to purchase real property
14 under § 13-207(a)(12) of the Tax - Property Article;

15 (iii) A sale by a lender or an affiliate or subsidiary of a lender that
16 acquired the real property by foreclosure or deed in lieu of foreclosure;

17 (iv) A sheriff's sale, tax sale, or sale by foreclosure, partition, or by
18 court appointed trustee;

19 (v) A transfer by a fiduciary in the course of the administration of a
20 decedent's estate, guardianship, conservatorship, or trust;

21 (vi) A transfer of single family residential real property to be
22 converted by the buyer into a use other than residential use or to be demolished; or

23 (vii) A sale of unimproved real property.

24 [(b)] (C) (1) A vendor of single family residential real property shall
25 complete and deliver to each purchaser:

26 (i) A written residential property condition disclosure statement on
27 a form provided by the State Real Estate Commission; or

28 (ii) A written residential property disclaimer statement on a form
29 provided by the State Real Estate Commission.

30 (2) The State Real Estate Commission shall develop by regulation a
31 single standardized form that includes the residential property condition disclosure
32 and disclaimer statements required by this subsection.

33 [(c)] (D) The residential property disclaimer statement shall state that:

1 (1) (I)[The] EXCEPT AS PROVIDED IN ITEM (II) OF THIS PARAGRAPH, THE
2 vendor makes no representations or warranties as to the condition of the real
3 property or any improvements on the real property; and

4 (II) THE VENDOR REPRESENTS AND WARRANTS THAT THE VENDOR
5 HAS NO ACTUAL KNOWLEDGE OF LATENT DEFECTS IN THE REAL PROPERTY OR AN
6 IMPROVEMENT TO THE REAL PROPERTY EXCEPT AS DISCLOSED ON THE
7 RESIDENTIAL PROPERTY DISCLAIMER STATEMENT; AND

8 (2) The purchaser will be receiving the real property "as is", with all
9 defects, INCLUDING LATENT DEFECTS, that may exist, except as otherwise provided
10 in the contract of sale of THE real property.

11 [(d)] (E) (1) The residential property disclosure statement shall disclose
12 those items that, to carry out the provisions of this section, the State Real Estate
13 Commission requires to be disclosed about the physical condition of the property.

14 (2) The disclosure form shall include a list of defects, INCLUDING
15 LATENT DEFECTS, or information of which the vendor has actual knowledge in
16 relation to the following:

17 (i) Water and sewer systems, including the source of household
18 water, water treatment systems, and sprinkler systems;

19 (ii) Insulation;

20 (iii) Structural systems, including the roof, walls, floors, foundation,
21 and any basement;

22 (iv) Plumbing, electrical, heating, and air conditioning systems;

23 (v) Infestation of wood-destroying insects;

24 (vi) Land use matters;

25 (vii) Hazardous or regulated materials, including asbestos,
26 lead-based paint, radon, underground storage tanks, and licensed landfills;

27 (viii) Any other material defects known to the vendor; and

28 (ix) Whether the smoke detectors will provide an alarm in the event
29 of a power outage.

30 (3) The disclosure form shall contain:

31 (i) A notice to prospective purchasers and vendors that the
32 prospective purchaser or vendor may wish to obtain professional advice about or an
33 inspection of the property;

1 (ii) A notice to prospective purchasers that disclosure by the seller
2 is not a substitute for an inspection by an independent home inspection company, and
3 that the purchaser may wish to obtain such an inspection;

4 (iii) A notice to purchasers that the information contained in the
5 disclosure statement is the representation of the vendor and is not the representation
6 of the real estate broker or salesperson, if any; and

7 (iv) A notice to purchasers that the information contained in the
8 disclosure statement is not a warranty by the vendor as to:

9 1. The condition of the property of which the vendor has no
10 actual knowledge; or

11 2. Other conditions of which the vendor has no actual
12 knowledge.

13 (4) The vendor is not required to undertake or provide an independent
14 investigation or inspection of the property in order to make the disclosures required
15 by this section.

16 [(e)] (F) (1) Except as provided in paragraphs (2) and (3) of this subsection,
17 the vendor shall deliver the completed disclosure or disclaimer statement required by
18 this section to the purchaser on or before entering into a contract of sale by the vendor
19 and the purchaser.

20 (2) The disclosure or disclaimer statement shall be delivered to each
21 purchaser before the execution of the contract of sale by the purchaser in the case of
22 a land installment contract, as defined in § 10-101 of this title.

23 (3) The disclosure or disclaimer statement shall be delivered to each
24 purchaser before the execution by the purchaser of an option to purchase agreement
25 or a lease agreement containing an option to purchase provision.

26 (4) At the time the disclosure or disclaimer statement is delivered, each
27 purchaser shall date and sign a written acknowledgment of receipt, which shall be
28 included in or attached to the contract of sale.

29 [(f)] (G) A purchaser who receives the disclosure or disclaimer statement on
30 or before entering into the contract of sale does not have the right to rescind the
31 contract of sale based upon the information contained in the statement.

32 [(g)] (H) (1) A purchaser who does not receive the disclosure or disclaimer
33 statement on or before entering into the contract of sale has the unconditional right,
34 upon written notice to the vendor or vendor's agent:

35 (i) To rescind the contract of sale at any time before the receipt of
36 the disclosure or disclaimer statement or within 5 days following receipt of the
37 disclosure or disclaimer statement; and

1 (ii) To the immediate return of any deposits made on account of the
2 contract.

3 (2) A purchaser's right to rescind the contract of sale under this
4 subsection terminates if not exercised:

5 (i) Before making a written application to a lender for a mortgage
6 loan, if the lender discloses in writing at or before the time application is made that
7 the right to rescind terminates on submission of the application; or

8 (ii) Within 5 days following receipt of a written disclosure from a
9 lender who has received the purchaser's application for a mortgage loan, if the
10 lender's disclosure states that the purchaser's right to rescind terminates at the end
11 of that 5-day period.

12 [(h)] (I) (1) A disclosure statement made under this section does not
13 constitute a warranty by the vendor as to:

14 (i) The condition of the property of which the vendor has no actual
15 knowledge; or

16 (ii) Other conditions of which the vendor has no actual knowledge.

17 (2) A vendor is not liable for an error, inaccuracy, or omission in a
18 disclosure statement made under this section if the error, inaccuracy, or omission was
19 based upon information that was:

20 (i) Not within the actual knowledge of the vendor;

21 (ii) Provided to the vendor by a unit or instrumentality of the State
22 government or of a political subdivision; or

23 (iii) Provided to the vendor by a report or opinion prepared by a
24 licensed engineer, land surveyor, geologist, wood-destroying insect control expert,
25 contractor, or other home inspection expert, dealing with matters within the scope of
26 the professional's license or expertise.

27 [(i)] (J) (1) A report or opinion prepared by an expert shall satisfy the
28 requirement of subsection [(h)(2)(iii)] (I)(2)(III) of this section if the information is
29 provided to the vendor pursuant to a written or oral request for the information.

30 (2) In responding to a request for information, the reporting party:

31 (i) May indicate, in writing, an understanding that the information
32 provided will be used in fulfilling the requirements of this section; and

33 (ii) If so indicating, shall indicate the required disclosures, or parts
34 of required disclosures, to which the information being provided is applicable.

1 (3) If the reporting party provides the statement under paragraph (2)(ii)
2 of this subsection, the reporting party is not responsible for any items of information,
3 or parts of items, other than those expressly set forth in the statement.

4 [(j)] (K) (1) The rights of a purchaser under this section may not be waived
5 in the contract of sale and any attempted waiver is void.

6 (2) Any rights of the purchaser to terminate the contract provided by this
7 section are waived conclusively if not exercised before:

8 (i) Closing or occupancy by the purchaser, whichever occurs first,
9 in the event of a sale; or

10 (ii) Occupancy, in the event of a lease with option to purchase.

11 [(k)] (L) Each contract of sale shall include a conspicuous notice advising the
12 purchaser of the purchaser's rights as set forth in this section.

13 [(l)] (M) (1) The real estate licensee representing a vendor of residential
14 real property as the listing broker has a duty to inform the vendor of the vendor's
15 rights and obligations under this section.

16 (2) The real estate licensee representing a purchaser of residential real
17 property, or, if the purchaser is not represented by a licensee, the real estate licensee
18 representing an owner of residential real estate and dealing with the purchaser, has
19 a duty to inform the purchaser of the purchaser's rights and obligations under this
20 section.

21 (3) If a real estate licensee performs the duties specified in this
22 subsection, the licensee:

23 (i) Shall have no further duties under this section to the parties to
24 a residential real estate transaction; and

25 (ii) Is not liable to any party to a residential real estate transaction
26 for a violation of this section.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2004.